Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	

ORIGINAL

AT&T'S REPLY COMMENTS ON THE DECEMBER 23, 1998 FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

As is described in greater detail below, the comments generally confirm AT&T's showing on each of the issues addressed in AT&T's opening comments.

Part I shows that the comments generally confirm that the Commission should mandate the adoption of a neutral third-party ("NTP") administration system to replace the system currently used to process and oversee carrier selections and freeze protections. The majority of commenters agree that the current system suffers from fundamental structural flaws that render it inherently discriminatory and anticompetitive, as well as costly and inefficient, and that these problems can best be remedied through the adoption of an NTP system.

The opponents of the NTP system, principally ILECs, attempt to show that such a system is neither necessary nor cost effective, but their objections do not withstand scrutiny. An NTP system is necessary because ILECs have both the incentive and proven willingness to manipulate the system to their own advantage, and existing enforcement mechanisms have not prevented, and will not prevent, them from doing so. Nor can existing enforcement mechanisms remedy the other defects in the existing system, such as the lack of open and visible processes, the lack of a centralized administrator, and the lack of uniform procedures. As the White Paper by Lockheed Martin Communications Industry Services ("Lockheed") explained, an NTP system is a technically feasible concept that will cost less, and certainly will not cost more, than the current system. *See* AT&T Comments at Attach. 1. The opponents' claims of undue complexity and expense overlook the architectural efficiencies of an NTP system, the availability of cost-effective technologies, and the significant costs of the present system. Accordingly, the self-serving criticisms, raised principally by ILECs that profit from the current flawed system, should not deter the Commission from moving forward with the development of an NTP system.

Part II shows that many carriers agree that the Commission should not impose additional penalties for slamming without first making changes in the current procedures for assessing customer-to-carrier and inter-carrier slamming liability. Although the imposition of additional penalties could, in principle, deter slamming, at present such a change would merely exacerbate the unfairness of the current procedures.

Part III demonstrates that, while there is no dispute among the commenters that "soft slamming" is a serious problem that warrants remedial action, the facilities-based carriers -- the commenters with the greatest body of experience with numbering and resale administration -- concur that the solutions proposed in the *FNPRM* are both technically and economically infeasible. AT&T and other carriers agree that the Commission should not adopt these unworkable proposals, but instead should address the soft slamming problem in conjunction with implementation of an NTP administration system.

Part IV shows that the comments confirm that permitting or requiring third party verifiers to furnish "consumer information" about the carrier selection process would contravene the Commission's policy of ensuring the neutrality of those verifiers. The large majority of commenters who address this issue likewise recognize that the verifiers' involvement in such transactions should be strictly confined to confirming the identity of the customer and the customer's selection of a specific new preferred carrier, without any additional embellishment of the verifiers' role.

Part V demonstrates that there is wide recognition among the commenters that mandatory carrier reporting of slamming complaints should not be required. With few exceptions, the commenters agree that requiring periodic reporting by carriers of the number of slamming claims lodged against them by end users would not provide the Commission with sufficient useful information to outweigh the substantial compliance burdens such a requirement would place on

carriers, and that a mere compilation of complaints, without any indication of the validity of those complaints, would more likely be misleading than informative.

Finally, Part VI shows that there is a broad consensus among the commenters that the proposed registration requirement for carriers is unnecessary and unduly burdensome.

For all these reasons, more fully described herein, the Commission should modify its *FNPRM* proposals in accordance with AT&T's comments and reply comments.

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AT&T'S REPLY COMMENTS ON THE DECEMBER 23, 1998 FURTHER NOTICE OF PROPOSED RULEMAKING

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Commission's *Public Notice*,[1] AT&T Corp. ("AT&T") submits these reply comments in response to the Commission's *FNPRM*[2] in this docket, which proposes modifications to the Commission's rules concerning "slamming" -- the changing of a subscriber's carrier selection without the subscriber's knowledge or explicit authorization.

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[1] Public Notice, Enforcement Division of the Common Carrier Bureau Announces Extension of Time for Filing Reply Comments on Slamming Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (rel. Mar. 25, 1999). Because the initial comments "contained detailed proposals" in response to the Commission's request for comments on independent third party administration of carrier changes, the *Public Notice* extended the period for reply comments up to and including May 3, 1999 to "give commenters additional time to address the specific proposals that were made" in the initial comment round.

[2] Second Report and Order and Further Notice of Proposed Rulemaking, *In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, FCC 98-334 (rel. Dec. 23, 1998). AT&T will refer to the Second Report and Order portion of the December 23, 1998 Order as "*Second Report and Order*," and will refer to the Further Notice of Proposed Rulemaking portion as "*FNPRM*." Appendix A, attached hereto, lists the parties in addition to AT&T that filed comments on the *FNPRM*.

INTRODUCTION

AT&T continues to fully support the Commission's objective of eliminating the practice of slamming. Toward that end, AT&T submits these reply comments to show that there is broad support for the proposals set forth in AT&T's opening comments. Most significantly, the comments confirm that the existing administrative system for carrier selections and freeze protections suffers from significant defects that render it competitively and administratively untenable in the new competitive environment, and that these defects can best be remedied through the adoption of a new, neutral third party ("NTP") administration system. The opponents of the NTP system, principally incumbent local exchange carriers ("ILECs"), attempt to show that it is neither necessary nor cost effective, but their objections do not withstand scrutiny.

The comments also support AT&T's position on the remaining issues addressed in its opening comments. First, the comments show that the Commission should not impose additional penalties for slamming without first making changes in currently prescribed liability procedures. Imposing such penalties merely would exacerbate the unfairness of the current procedures. Second, the commenters with the greatest body of experience with numbering and resale administration -- facilities-based carriers -- concur that the *FNPRM*'s "soft slamming" solutions are both technically and economically infeasible. The Commission should instead address the soft slamming problem in conjunction with the adoption of an NTP administration system. Third, the comments confirm that permitting or requiring third party verifiers to furnish "consumer information" about the carrier selection process would contravene Commission policy by undermining the neutrality of those verifiers. Finally, there is wide recognition among the commenters that the Commission should not require mandatory carrier reporting of slamming complaints or additional registration requirements. For all these reasons, more

fully described herein, the Commission should modify its *FNPRM* proposals in accordance with AT&T's comments and reply comments.

ARGUMENT

I. THE COMMENTS CONFIRM THAT A NEUTRAL THIRD PARTY, AND NOT THE ILECS, SHOULD HAVE ADMINISTRATIVE CONTROL OVER CARRIER SELECTIONS AND FREEZE PROTECTIONS.

A. The Majority Of Commenters Agree That Continued ILEC Control Over Carrier Selections And Freeze Protections Is A Recipe For Disaster.

In its comments, AT&T demonstrated that the existing administration system for carrier selections and freeze protections is unworkable in the competitive environment that Congress and this Commission seek to create. AT&T Comments at 4-15. Due to the anticipated development of direct competition between ILECs and interexchange carriers ("IXCs), and the incipient proliferation of local service providers ("LSPs"), ILECs can no longer be considered neutral or centralized administrators, and thus there is no longer any justification for allowing them to continue their control of this system. Indeed, allowing such control merely provides the ILECs with endless opportunities to manipulate the system to their own advantage -- a fact amply confirmed by their record of past abuses. AT&T also showed that the viability of the existing system is further undermined by other defects, including, *inter alia*, the absence of open and visible processes, the failure to empower carriers to serve their customers, the potential for non-uniform procedures, and excessively high costs. *Id.* AT&T therefore urged the Commission to remedy these defects by mandating the development of a centralized and neutral administration system for the processing of carrier selections and freeze protections, and demonstrated that such a system would be technically feasible, cost-effective, and beneficial to consumers, carriers, and the Commission. *Id.* at 15-30.

The majority of commenters that addressed this issue agree with AT&T that continued ILEC control over the carrier selection and freeze protection system is a recipe for disaster, and that the Commission should begin to develop a neutral third party mechanism for the administration of this system.[3] With respect to neutrality, CompTel/ACTA states that "the assumption that ILECs are neutral in administering [carrier selection] changes is no longer accurate" and "[e]stablishing a third-party administrator . . . would avoid the problems inherent where the executing carrier may have a direct or indirect financial incentive to confirm or deny a [carrier selection] change." CompTel/ACTA Comments at 14. Similarly, Frontier -- the former IXC affiliate of an ILEC -- argues that the ILECs have "vested interests in the outcome of the process" and that "it is therefore imperative that the process be administered by a neutral third party with no competitive stake in the outcome." Frontier Comments at 11. MCI WorldCom expresses a similar view, noting that "allowing one competitor -- an ILEC -- to control information and processes necessary for another competitor to offer service is a recipe for anticompetitive problems." MCI WorldCom Comments at 4. *See also* TRA Comments at 27 ("It is simply not appropriate to have interested parties administering these [carrier selection and freeze protection] functions on behalf of competitors. . . . The incentives of interested parties to strategically manipulate the carrier change and preferred carrier freeze process are simply to[o] great to ignore."); Teltrust Comments at 16 (carrier selection and freeze protection processes "today are handled by the LECs and thus suffer from the inherent conflict of interest resulting from the LEC position as both a competing carrier and the entity that executes

[3] *See* Cable & Wireless Comments at 24-25; CompTel/ACTA Comments at 14; Excel Comments at 8-9; Frontier Comments at 11-12; MCI WorldCom Comments at 4; NASUCA Comments at 18; Qwest Comments at 26; RCN Comments at 6; Sprint Comments at 12; TRA Comments at 27; Teltrust Comments at 16.

the carrier changes and carrier freezes . . . . The FCC should remove the LEC from these processes to remedy the inherent conflict of interest problem.").[4]

These commenters also shared AT&T's concerns over the existing system's lack of open and visible processes. For example, Qwest argues that "LECs are able to maintain an information advantage over their competitors, as they have the overwhelming majority of information on which customers have changed, and are more likely to change, service." Qwest Comments at 26. MCI WorldCom also noted that "one of the most difficult problems that new entrants face today is the prospect of attempting to win new customers in an environment where basic information about PIC freeze status of an ANI is not available," and agreed with AT&T that 20 to 30 percent of its carrier selection orders are "blocked" due to freeze protections which MCI WorldCom is not capable of detecting. MCI WorldCom Comments at 5.

Similarly, these commenters expressed concerns over the ILECs' inability to continue to serve as a single point of contact for carrier selection administration (due to the proliferation of LSPs and the fragmentation of the existing hub-and-spoke system), and the excessive costs of the existing system. MCI WorldCom, for example, shows that the proliferation of LSPs will cause all carriers to "face increased difficulty in ascertaining the customers' local exchange carrier, and in interacting with that local carrier's back office systems to effectuate a PIC change." MCI WorldCom Comments at

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[4] Indeed, in circumstances where their own competitive interests could be controlled or affected by competitors, ILECs have emphasized the need for a neutral third party administrator. Thus, for example, Bell Atlantic argues that a Third Party Liability Administrator ("TPLA") with authority to resolve carrier-to-carrier liability claims must be "truly independent and neutral and. . .not favor any specific class of carriers." Comments of Bell Atlantic on Joint Petition and Joint Motion, CC Docket No. 94-129 (filed April 16, 1999), at 1. Ameritech has likewise complained that the composition of the TPLA's proposed Board, which allegedly under-represents ILEC interests, is "troubling" because the Board can, among other things, establish the threshold of false verification cases that would result in penalties to a carrier. Ameritech Comments on Joint Petition for Waiver, CC Docket No. 94-129 (filed April 16, 1999), at 6.

6. It also notes that "ILEC-administered PIC change processes are extremely expensive. There can be no room in a fully competitive environment for one competitor to impose an above-cost rate on another competitor to administer a process that allows the other competitor to compete." *Id.* at 6-7. Sprint concurs, finding that a "a neutral third party PIC administrator . . . will be more efficient than the current PIC system, and is likely to be cost-effective." Sprint Comments at 13.

In short, the comments confirm that the existing system for administration of carrier selections and freeze protections suffers from numerous defects that render it unworkable in the competitive environment envisioned by the 1996 Act. These parties therefore urge the Commission to mandate the development of a NTP system to address these fundamental defects. As AT&T describes below, the contrary and self-serving arguments that opponents to such a system advance are wholly ill-conceived, and should not deter the Commission from moving forward with the development of this system.

B. The Opponents' Objections To The NTP System Do Not Withstand Scrutiny.

The opponents to the development of an NTP system offer a handful of misguided arguments in support of their position. They argue principally that the NTP system is not necessary because ILECs have neither the incentive nor the ability to manipulate the existing system to their advantage. Similarly, they claim that existing enforcement mechanisms, including the *Second Report and Order*, are sufficient to deter anticompetitive conduct and otherwise to remedy the defects of the current administration system. Finally, they contend that an NTP system would be unduly expensive in any event. Each of these arguments misses the mark.

1. The ILECs Have Both The Incentive And The Ability To Manipulate The Existing System To Their Own Advantage.

Offering perhaps the most strident opposition to the development of an NTP system, Ameritech argues that "[t]here is absolutely no evidence that LECs could discriminate in their performance of [carrier selection and freeze protection]-related duties." Ameritech Comments at 23. This assertion, however, flies in the face of the Commission's express recognition that ILECs "have the incentive *and the ability* to delay or refuse to process carrier change orders in order to avoid losing local customers, or in order to favor an affiliated IXC." *FNPRM* ¶ 102 (emphasis added). Similarly, the Commission has recognized that "preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner" and that "a number of state commissions have determined, and certain LECs concede, that unregulated preferred carrier freezes are susceptible to such abuses." *Id.* ¶ 115 (internal citations omitted).

Furthermore, the ILECs' incentive and ability to engage in anticompetitive practices is amply confirmed by past misuses of the carrier selection and freeze protection process. As AT&T demonstrated in its initial comments, ILECs have used their control over carrier selections and freeze protections to discriminate against competitors, to hide their own slamming misconduct, and to interfere with the ability of IXCs to implement carrier selections. AT&T Comments at 4-13. For example, ILECs have refused to implement IXCs' customers' freeze protection requests while soliciting freeze protection requests from their own customers, and have responded to the imminent arrival of competition in intraLATA toll markets by using freeze protections to lock up their existing customers. *Id.* at 6. ILECs also have refused to remedy unlawful slams even though, as a result of their monopoly over carrier selection and freeze protection information, they were the only entities in a position to do so. *Id.* at 8, 11-12. Finally, ILECs have interfered with IXCs' abilities to

implement carrier selections by preventing IXCs from changing the freeze protection status of customers who wish to switch service providers, and by improperly marketing their services during three-way calls designed to overcome this ILEC stonewall. *Id.* at 8-10.

Attempting to brush aside this history of abuse, Ameritech claims that AT&T's showing reflects nothing more than a "shameless[] distort[ion] [of] the facts and the findings in various state proceedings." Ameritech Comments at 24 n.9. The state commissions' findings, however, speak for themselves, and they flatly refute Ameritech's claims. For example, Ameritech claims that it "has always *prohibited* its sales representatives from marketing intraLATA toll service during three-way calls" and that "[o]nly *one* sales representative, on *one* call among tens of thousands of three-way calls handled by Ameritech, attempted to market intraLATA toll service to the customer -- and it did so in direct violation of Ameritech policy." *Id.* at 24 (first emphasis in original). These bold pronouncements are simply false. The Michigan Public Service Commission ("MPSC") found that Ameritech had engaged in a "*pattern* of [mis]behavior during its three-way calls" and had "*repeatedly* violated either the letter or the spirit" of the MPSC's previous orders prohibiting Ameritech from marketing its services during such calls.[5] The MPSC's conclusions, moreover, were amply supported by the testimony of Todd A. Gerdes, who testified that "of the approximately 60 three-way calls he personally monitored, the service representatives for Ameritech Michigan and its affiliates 'acted inappropriately *in every single one of them*,'" and by the "sworn statements provided by some of Ameritech Michigan's *own service representatives*," who "len[t] substantial support to Mr. Gerdes' observations."[6]

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[5] *Complaint of MCI Telecomms. Corp. against Ameritech Michigan*, Case No. U-11550, 1998 Mich. PSC LEXIS 134, *9, 24, 27 (May 11, 1998)

[6] *Id.* at *27-28 (emphasis added).

Similarly, Ameritech attempts to downplay its refusal to abide by the MPSC's requirement that Ameritech process intraLATA carrier change orders validated through any of five authorized methods, including third party verifications, three-way calls, and letters of agency.[7] In blatant disregard of the MPSC's orders, Ameritech insisted that all carrier selection changes be made *exclusively* through three-way calls, and refused to accept changes authorized through the other methods.[8] The obvious purpose of this scheme was to funnel all carrier change requests through Ameritech's sales representatives, who then would attempt to dissuade customers from switching service providers.[9] When the MPSC again ordered Ameritech to permit carrier changes authorized by the other methods and to refrain from marketing its services during three-way calls, Ameritech again refused to abide by the MPSC's order, and instead "initiated a public relations campaign designed to increase customer anxiety about the potential for slamming [and made a] unilateral decision to cease providing [freeze] protection to any of its customers after May 31, 1998."[10] Although Ameritech asserts that these repeated violations of the MPSC's orders are "commendable," Ameritech Comments at 24 n.9, there is nothing commendable about flagrant, self-serving, and unlawful violations of binding state law.[11]

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[7] *Sprint Communications Co.* v. *Ameritech Michigan*, Case No. U-11038, 1996 Mich. PSC LEXIS 259, *36-37 (Aug. 1, 1996).

[8] *Complaint of MCI Telecomms. Corp. against Ameritech Michigan*, Case No. U-11550, 1998 Mich. PSC LEXIS 134, *13 (May 11, 1998)

[9] *Complaint of MCI Telecomms. Corp. against Ameritech Michigan*, Case No. U-11550, 1998 Mich. PSC LEXIS 134, *11, 15 (May 11, 1998).

[10] *In re to Determine Procedures to Ensure That an End User of a Telecommunications Provider Is Not Switched to Another Provider Without the Authorization of the End User*, Case No. U-11757, 1998 Mich. PSC LEXIS 256, *22-23 (Sept. 23, 1998).

[11] Ameritech suggests that its insistence on the use of three-way calling was somehow consistent with (continued...)

Nor is Ameritech the only ILEC to have manipulated the existing carrier selection and freeze protection administration system to its own advantage. As AT&T's comments show, the ILECs have uniformly refused to provide AT&T with the identity of the carriers that have slammed AT&T's customers. AT&T Comments at 11-12.[12] Ameritech, BellSouth, Bell Atlantic, GTE, SBC, SNET, and U S West have all refused to implement AT&T's customers' requests for freeze protection. *Id.* at 6. BellSouth has used its information monopoly to mask its own slamming misconduct, *id.* at 7-8, Bell Atlantic has refused to assist AT&T in remedying unlawful slams by other carriers, *id.* at 11, and NYNEX has improperly marketed its service during three-way calls, *id.* at 9. The problem is ubiquitous, and is in no way limited to isolated instances of misconduct.

In short, there is no merit to the opponents' contentions that the NTP system is not necessary. ILECs have both the incentive and the ability to engage in anticompetitive conduct, and they have done so on repeated occasions. Indeed, allowing these non-neutral entities to control processes that are critical to their competitors creates innumerable opportunities for anticompetitive conduct, and no amount of tinkering at the edges will remedy this fundamental structural flaw.

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[11] (...continued)
the Commission's orders. Ameritech Comments at 24 n.9. Although the Commission has rejected the use of third party verification to lift preferred carrier freezes, *FNPRM* ¶ 128, the Commission has never ruled that three-way calling is the *exclusive* means of lifting a freeze. To the contrary, the Commission has determined that LECs must accept other methods of authorization, including letters of agency -- a form of authorization that Ameritech unlawfully refused to accept in Michigan. *Id.* ¶¶ 128-32.

[12] *See also* Opposition of U S West Communications, Inc. to Joint Petition for Waiver, CC Docket No. 94-129 (filed April 16, 1999) at 4 n.8 (confirming that, even after a customer has called to complain about being slammed, U S West will not identify the slamming carrier to the original or authorized carrier).

2. Existing Enforcement Mechanisms Are Insufficient To Remedy The Defects Of The Current Administration System.

The opponents of the NTP system also suggest that existing enforcement mechanisms, including the *Second Report and Order*, are sufficient to remedy the defects in the existing system.[13] AT&T's comments, however, demonstrate that this is simply not true. AT&T Comments at 9-10. As an initial matter, it is difficult to use the existing enforcement mechanisms to seek redress even if the challenged practices are plainly impermissible. Limited instances of misconduct do not justify the trouble or expense of administrative or legal action, and carriers must expend substantial resources to detect and prove widespread patterns of abuse. Even then, damages may be difficult, if not impossible, to prove. Furthermore, Ameritech's repeated refusals to abide by the MPSC's orders demonstrate that existing enforcement mechanisms have proven ineffective in deterring misconduct even when victimized carriers prevail in administrative or legal proceedings. These shortcomings only will become more pronounced as competition begins to take hold in the local market because a staggering number of carrier selections and freeze protections will have to be processed each year, thus creating innumerable opportunities for ILECs to manipulate the system to their own advantage, and requiring victimized carriers to file an endless procession of section 208 complaints with the Commission.[14]

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[13] Ameritech Comments at 25; GTE Service Corp. Comments at 15; Missouri PSC Comments at 3-4; SBC Comments at 17-18; U S West Comments at 32-33.

[14] Ameritech also suggests that "[freeze] protection systems," such as "the removal of [freeze] protection by initiating a three-way call at the time of sale," should "limit any opportunity for anticompetitive behavior." Ameritech Comments at 23. As the MPSC's orders demonstrate, however, the use of three-way calls will not deter ILECs from engaging in anticompetitive conduct. Indeed, as AT&T explained above, Ameritech tried to funnel all carrier change orders through a three-way call process so that it could have its sales representatives attempt to dissuade customers from switching carriers. Thus, three-way calls were a vehicle for anticompetitive conduct, not its solution.

Even if existing enforcement mechanisms could prevent ILECs from engaging in anticompetitive conduct, they are powerless to remedy the other defects in the existing system. For example, the existing enforcement mechanisms do nothing to remedy the current system's lack of open and visible processes because it is not clear whether new entrants have a remedy when ILECs refuse to share information about customers' carrier selections and freeze protections. Furthermore, the existing enforcement mechanisms do nothing to remedy to technological obstacles that carriers will face when LSPs begin to proliferate, the existing hub-and-spoke system begins to disintegrate, and new LSPs do not use uniform procedures. These defects will render the existing carrier selection and freeze protection system a technical and economical impossibility.

Finally, U S West argues that the Commission should adhere to the status quo in order to avoid "what is increasingly become the 'Third Party Enforcement Estate' in this Country." U S West Comments at 36. There is, however, no conspiracy to subject the industry to such an "Enforcement Estate." Instead, the Commission has rationally recognized that "critical network functions that were performed by the ILECs need to be reassessed" in light of "Congressional, Commission, and executive branch policy now favoring a competitive model for the local exchange." MCI WorldCom Comments at 3. The changing status of ILECs has led Congress and the Commission to recognize the necessity and utility of a neutral administrator for both North American Numbering Plan administration and local number portability administration, and the next logical step is to recognize the necessity and utility of such an administrator for carrier selections and freeze protections. *Id.* Indeed, despite its own dark warnings, U S West has acknowledged the utility of third party administration when those efforts serve its own interests. Thus, U S West recognizes that "something in the nature of a [third party] liability administration process . . . is clearly necessary" for resolving slamming disputes in order to spare ILECs the awkwardness of having to rule against their own

customers in such disputes and/or having to re-rate the customers' bills. *See* Opposition of U S West Communications, Inc. to Joint Petition for Waiver at 6.

3. The Proposed Neutral Third Party Administration System Would Be More Cost Effective Than The Existing System.

In addition to arguing that neutral administration of carrier selection and freeze decisions is unnecessary, opponents, principally ILECs, object to the creation of a NTP system on cost grounds.[15] The ILECs, of course, derive large revenues[16] as well as significant and unfair competitive advantages from their domination of the current carrier selection system, and can therefore be expected to level this charge at the proposed system set forth in the Lockheed White Paper.[17] These predictable and self-serving claims, however, should not dissuade the Commission from mandating industry development of an NTP system along the lines proposed in the Lockheed White Paper. Indeed, ILEC claims of undue expense conveniently overlook the architectural efficiencies of an NTP system, the availability of cost-effective technologies (some of which, ironically, the ILECs themselves identify elsewhere in their comments), and the significant costs of the present system. As the Lockheed White Paper explained, an NTP system is "a technically feasible" concept that "will cost less, and certainly will not cost more, than the current system." White Paper at 1.

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[15] *See* Ameritech Comments at 26 (claiming costs would be "significant" and "considerable"); GTE Service Corp. Comments at 15 (third party administration "will add to the overall cost of the process"); CBT Comments at 4 (NTP system will "merely add costs"); U S West Comments at 37 (system would "increase U S West's costs/expenses").

[16] *See* U S West Comments at 37 (acknowledging that a third party system would "reduc[e] our revenues (which we receive for executing the carrier changes, including making the necessary changes in our switches)").

[17] Lockheed Martin, "White Paper on a Neutral Third Party PIC/CARE Clearinghouse" (Mar. 18, 1998) ("White Paper").

In attempting to demonstrate the "considerable" costs of an NTP system, Ameritech notes that every carrier would have to establish electronic links to the NTP, which in turn would have to establish links to each facilities-based LEC. Ameritech Comments at 26. What Ameritech ignores, however, is that this centralized "hub and spoke" system, which is currently used to implement line number portability, will in fact be far more efficient and cost-effective than the current system when multiple facilities-based LSPs operate in a single area. As AT&T explained in its comments, such LSPs are cropping up around the country, particularly in densely populated areas. While these LSPs have yet to attain any significant market shares, carriers seeking to provide interLATA and intraLATA toll services in such areas will have to establish electronic links not just to a single NTP, but to a dozen or more facilities-based LSPs providing service in those areas. And because customers can choose one such LSP for local service and another for intraLATA toll service, all of the facilities-based LSPs in a given area must establish electronic links with each other, as well as with the ILEC. Thus, whatever the costs of establishing electronic links to an NTP, these costs are necessarily a fraction of the costs that carriers and LSPs will incur to develop the connectivity needed under the current system.

Ameritech also suggests, without any supporting evidence, that the costs of constructing, operating and maintaining a centralized database containing "every single telephone line in the country" would be "considerable." *Id.* But as the Lockheed White Paper explains, "the data storage and retrieval needs of such a centralized system are quite manageable and commonplace in both telecommunications (National Directory Assistance) and other industries (Credit Card)." White Paper at 5. Indeed, the costs of data storage and retrieval have fallen dramatically from the mid-

1980s, when the then-seven Bell Operating Companies ("BOCs") and GTE developed the handful of centralized regional databases that currently house the bulk of the nation's telephone lines.[18]

Moreover, the submissions by a number of commenters (including, ironically, Ameritech itself), demonstrate that the technology the NTP system could employ is both readily available and cost-effective. Thus, for example, the Lockheed White Paper proposes that the NTP could provide carrier selection information and take carrier selection orders from customers by using audio response units ("ARUs"), or voice response units. White Paper at 5. Ameritech itself, among others, notes that ARUs are a cost-effective method of performing these very same functions. Ameritech Comments at 12-13. Indeed, as another commenter explains, such automated systems "provide immediate connections, round-the-clock availability, and predictable, consistent service" at "a savings of as much as 75 percent off the cost of live operator services." MediaOne Comments at 5-6.[19]

The White Paper also describes how carriers could access the NTP's centralized database "through a voice-response system that allows them to dial the customer's 10-digit telephone number to determine if it is frozen." White Paper at 5. In its submission, Bell Atlantic has attached an order of the New York Public Service Commission ("NYPSC") that describes how Bell Atlantic uses the very same technology to enable customers to place or lift freezes. In this "automated freeze/unfreeze system," customers dial their 10-digit telephone numbers and account codes to gain access to their account information, then respond to audio prompts to freeze or unfreeze a line. *See* Order Adopting New York Telephone Company's IntraLATA Freeze Plan With Modifications, NYPSC, Case 28425

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[18] It is worth noting, moreover, that in its initial implementation, an NTP system would not serve every line in the country, but rather every line in certain geographically defined major metropolitan areas. This limitation would reduce some of the initial costs of the NTP system, which could be designed to permit so-called "scalability" (*i.e.*, readily-increased capacity) in the future.

[19] *See also* PriceInteractive, Inc. Comments at 3-4 (noting the ability of automated systems to interact with customers in order to verify sales and obtain security information).

(Dec. 23, 1998) at 4; *see also* Ameritech Comments at 23-24 (describing what appears to be the same system of allowing customers to lift freeze protections "by calling an automated voice response unit"). The NYPSC found that the costs of this technology are "minimal." NYPSC Dec. 23 Order at 5.[20]

Similarly, the White Paper explains that, as part of the TPV process, customers could authorize freeze overrides by providing information such as the last four digits of their social security numbers to an independent verifier, who would then query the database and validate the change using this customer-provided information. White Paper at 5-6. In its submission, BellSouth describes a similar system that allows customers to order and change services through a secure website. In this system, customers would "be asked to provide electronically certain identifying information (*e.g.* mother's maiden name, last 4 digits of Social Security number)" to verify their orders. Bell South Comments at 3.

Beyond this failure to recognize the availability of cost-effective technologies, the cost concerns of some opponents reflect either misunderstandings about, or mischaracterizations of, the goals and functions of an NTP system. The NTP will not, for example, "perform[] carrier changes." Montana Public Service Commission Comments at 4. The switch translation work necessary to implement a new carrier selection will, and indeed must, be done by the facilities-based carriers themselves. Nor will the NTP "verif[y]" that LSPs actually implement carrier changes. *See id.*; *see also* U S West Comments at 37. While the NTP must "ensure receipt of appropriate confirmation

[20] The Bell Atlantic and Ameritech systems, moreover, confirm that ILECs store freeze protection data in centralized databases. As AT&T explained in its initial comments, such centralized storage will make it easy and inexpensive to migrate this data to an NTP system. AT&T Comments at 20 n.12.

records" from LSPs (White Paper at 2), selected carriers have sufficient incentives and ability to monitor whether the LSPs actually implement new carrier designations at their switches.

Finally, ILECs that decry the costs of an NTP system completely overlook the enormous expense of the current system. As AT&T explained in its comments, with the advent of intraLATA toll competition, ILECs can expect to receive a half *billion* dollars *per year* in carrier selection charges. ILECs wish to maintain their control over the current system not simply because they are "compensated for [their] costs,"[21] but because they charge above-cost prices for these activities and thus enjoy a stream of supra-competitive revenues. It is disingenuous, to say the least, for entities profiting so handsomely from an inherently unfair and inefficient system to oppose the abolition of that system on the grounds that a neutral system will cost money.[22]

Nor do ILEC carrier selection charges reflect the full costs of the current system. Non-ILEC carriers incur enormous marketing expenses as a result of the current system, both because an inordinate number of their valid sales are rejected due to freeze protections, and because the steps carriers must take to avoid such rejections (*i.e.*, three-way conference calls with the ILEC) increase the holding time (and thus the expense) of each sale. Moreover, the inability of preferred carriers to remedy slams increases the administrative costs of slamming. This is perhaps most vividly illustrated by Bell Atlantic's refusal to switch back to AT&T 53,000 slammed customers in Maryland -- a refusal that forced AT&T to undertake a painstaking manual comparison of lengthy customer lists in order

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[21] U S West Comments at 35 n.81.

[22] Of course, ILECs will still be compensated for the reasonable costs of implementing carrier selection changes efficiently at their switches. They will not, however, be able to charge supra-competitive prices for such work. Indeed, because other facilities-based LSPs will also have to implement carrier selection changes at their switches, it should be relatively easy to determine when ILECs levy supra-competitive charges for the same work.

to rectify an undisputed error.[23] In addition, the inability of preferred carriers to remedy slams increases the incidence of slamming itself: the harder it is to detect and correct slamming, the greater the incentives unscrupulous entities have to slam in the first place.

AT&T has never maintained that an NTP system could be established at *no* cost. Rather, it believes, and the Lockheed White Paper concluded, that such a system would not cost *more* than the current, deeply flawed system. That conclusion is not called into question by ILEC arguments that simply note the costs of an NTP system, but that fail to acknowledge either the cost-effective technologies that a third party can use to hold down costs or, more importantly, the enormous expense and wastefulness of the current system.

II. ADDITIONAL PENALTIES FOR SLAMMING SHOULD NOT BE IMPOSED WITHOUT CHANGES IN CURRENTLY PRESCRIBED LIABILITY ARRANGEMENTS.

AT&T showed in its comments that the imposition of "additional penalties" on unauthorized carriers could in principle promote deterrence of slamming, but at present such a change would merely exacerbate the unfairness of the Commission's currently-prescribed procedures for assessing customer-to-carrier and inter-carrier slamming liability. AT&T Comments at 30-32; *FNPRM* ¶¶ 140-44. This is because under the current procedure the determination whether a contested change was unauthorized is made by the affected customer's previous carrier, which has every incentive to resolve that issue in its own favor, both to obtain for itself all amounts previously paid by the customer to the competing carrier and to ingratiate itself with the customer, who will thereby be absolved from payment of the first 30 days of the other carrier's charges. This process is already inherently biased; increasing the economic incentive for self-dealing by the carrier making the liability adjudication will only further skew the outcome of those determinations.

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[23] *See* AT&T Comments at 11-12.

Like AT&T, many commenters recognize that it would be inappropriate and counterproductive at this time to increase the penalties for slamming. As AT&T's waiver request makes clear, the Commission's currently-prescribed liability determination process is completely unworkable.[24] Thus, as Qwest points out, "any mechanism that will complicate the already complex system of transfer payments and reimbursements should be rejected." Qwest Comments at 6. Both Cable & Wireless and MediaOne similarly observe that the Commission should assess whether the currently-prescribed liability mechanism (as properly amended, or pursuant to appropriate waiver) can successfully function before attempting to prescribe any additional penalties to be awarded under that process.[25] In light of the clearly valid concerns raised by AT&T and these other parties, the Commission should refrain from increasing the penalties for slamming unless it concurrently revises the liability determination mechanism to eliminate the fundamental unfairness and bias that pervades that procedure as it is now prescribed. Cable & Wireless Comments at 18; MediaOne Comments at 10.[26]

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[24] Joint Petition for Waiver, *In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129 (filed Mar. 30, 1999).

[25] *See also* GTE Comments at 3-4 (the *FNPRM*'s proposal will result in "administrative problems and confusion" due to lack of information necessary to determine amount of additional payment).

[26] Provided that these serious flaws are corrected, however, AT&T endorses Commission action to improve deterrence of slamming by adoption of an appropriate sum, in the nature of liquidated damages, to be assessed upon an unauthorized carrier and paid to the customer's authorized service provider for each unauthorized change. *See* AT&T Comments at 31-32. Other parties recognize that such an approach would have considerable benefits in addressing the slamming problem. *See* SBC Comments at 4 (a liquidated damages arrangement "may very well be a just and reasonable solution to a vexing industry problem").

III. THE COMMENTS DEMONSTRATE THAT THE FNPRM'S PROPOSED ALTERNATIVES TO CONTROL "SOFT SLAMMING" ARE TECHNICALLY AND ECONOMICALLY INFEASIBLE.

There is no dispute among commenters that the Commission has correctly concluded that so-called "soft slamming" – the unauthorized substitution of a switchless reseller for the underlying facilities-based provider as the customer's preferred carrier – is a serious problem that warrants remedial action. However, as AT&T showed in its comments, the alternatives proposed in the *FNPRM* to alleviate soft slamming are rife with serious technical and economic problems that preclude adoption of any of those measures. AT&T Comments at 32-41.[27]

Other facilities-based carriers, the commenters with the greatest body of experience with numbering and resale administration, concur with AT&T's showing that the *FNPRM*'s proposed alternatives are technically and economically infeasible, as well as likely to be ineffectual. Thus, MCI

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[27] Specifically, AT&T demonstrated that requiring resellers to obtain a carrier identification code ("CIC") would threaten to accelerate dramatically the exhaustion of that scarce numbering resource, which has only recently been expanded to four digits after three digit CICs reached exhaustion. In particular, because resellers often purchase underlying services from more than one facilities-based carrier, this proposal would require issuance of up to six CICs to each of the approximately 500 resellers now in operation. Moreover, CIC assignment to resellers would be largely ineffective to prevent soft slamming because many resellers purchase services from another reseller, rather than directly from a facilities-based carrier. AT&T Comments at 36-37.

Similarly, AT&T showed that the *FNPRM*'s second alternative of requiring facilities-based carriers to issue a "pseudo-CIC" (*i.e.*, unique coded three- or four-digit suffixes following its own CIC) to entities that resell those carriers' services would be largely ineffective to control soft slamming in the "multi-tiered" interexchange marketplace in which resellers purchase services from other resellers. While it would not curtail soft slamming, this procedure would require costly changes in facilities-based carriers' provisioning systems, and would significantly delay inter-carrier order processing. *Id.* at 37-38.

Finally, AT&T showed that requiring facilities-based carriers to implement changes in their internal systems to prevent soft slams by entities that resell their services, as the *FNPRM* alternatively suggests, is impractical because it would require real-time coordination between local carrier freeze protection and the *de facto* freeze protection applied by the facilities-base carriers. These system changes, while costly to implement, would again not preclude continued soft slamming in light of the multi-tiered nature of the resale market. *Id.* at 38-39.

WorldCom points out that CIC assignment to each reseller would require LECs to implement translations for each such code in each of the up to 4,000 end offices nationwide from which the reseller may originate traffic. MCI WorldCom Comments at 18-19. It estimates that such orders would cost at least $500,00 per CIC for resellers offering service on a nationwide basis and notes that, under current provisioning intervals, this procedure could take up to 60 days from the date that such translations are ordered from the LECs. Any subsequent changes in the reseller's underlying facilities-based carrier would substantially add to the translation cost of this alternative to resellers.[28]

Sprint similarly recognizes that assignment of CICs to resellers will impose substantial translation costs on those carriers. Sprint Comments at 5. Sprint estimates the total translation charges for nationwide activation of a single CIC code at between $600,000 and $1 million. Moreover, it points out (*id.*) that this estimate does not include the carrier selection change charges that LECs would assess for each working telephone changed to the reseller's CIC from the current underlying facilities-based carrier's CIC.[29] Like AT&T, Sprint also recognizes that assigning pseudo-CICs to resellers would require costly changes in LEC and IXC systems, and that the *FNPRM*'s other proposed alternative (requiring modification of facilities-based carriers' system to curb soft slams) would "require costly work-arounds" and could be largely ineffectual in cases involving multiple levels of resellers. Sprint Comments at 6-7.

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[28] MCI WorldCom also points out that its cost estimates above do not take into account the impact of "substantial systems modifications" by IXCs and LECs that would be required to accommodate CIC assignment to resellers. MCI WorldCom Comments at 19 n.17.

[29] Sprint mistakenly asserts, however, that CIC assignment to resellers would not significantly increase the threat of CIC exhaustion. First, Sprint appears to overstate the number of remaining unassigned CICs available for assignment to resellers. *Compare* Sprint Comments at 5 *with* AT&T Comments at 37 & n. 32. Second, Sprint ignores the fact that switchless resellers often make use of underlying services from more than one facilities-based carrier in the same end office, so that multiple CICs would need to be assigned to each reseller. Sprint Comments at 5.

Finally, Qwest mirrors the observations of other facilities-based carriers that individual CIC assignments to resellers would impose significant "translation access" costs to implement; that adoption of pseudo-CICs as an alternative "would still impose significant costs" on both facilities-based IXCs and LECs to reconfigure their systems; and that requiring facilities-based carriers to adopt modifications to implement *de facto* carrier selection would be both expensive to implement and problematic in terms of its effectiveness in controlling soft slams. Qwest Comments at 8-11.[30]

In lieu of these costly -- and, as other parties confirm, largely ineffectual -- alternatives, AT&T showed in its comments that the *FNPRM*'s indisputably desirable goal of controlling soft slams can best be achieved in conjunction with implementation of neutral third party ("NTP") administration of carrier selection. AT&T Comments at 40-41. Other commenters recognize the benefits of this approach in controlling soft slamming. For example, CompTel/ACTA states that an NTP would "alleviate the problem of misidentification" of the carrier responsible for a soft slam, and "avoid

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[30] Several LECs also confirm the practical impediments to adoption of the *FNPRM*'s proposed alternatives that facilities-based IXCs have identified. *See, e.g.*, GTE Comments at 4-6, 8-10 (noting many of its switches cannot accommodate the increase in CICs that would need to be assigned to resellers, and the requiring system modifications by facilities-based carriers would "add significantly to the cost of administering the carrier identification process"); SBC Comments at 5 (CIC assignment to resellers "will hasten the day that the telephone industry will incur the additional expense to allow for the expansion to 5 digit CICs"); CBT Comments at 2 ("the available pool of [CIC] codes could soon be exhausted" and "administrative costs associated with assigning, changing and maintaining the codes would be too high").

Similarly, Ameritech points out that assigning CICs to resellers "would hasten the exhaustion of 4-digit CICs" and entail "enormous expense and customer dislocation." Ameritech Comments at 8. In lieu of that proposal, Ameritech suggests hat facilities-based carriers be required to transmit to LECs information identifying an end user's line as a resold account "through a discrete field within the Customer Account Record Exchange (CARE) record." *Id.* at 6. As AT&T showed in its comments, the current CARE process *already* provides for a "toll reseller indicator" field such as Ameritech describes. AT&T Comments at 33 n.29. AT&T's experience indicates, however, that even where it has populated that field, LECs frequently do not make use of that information and continue to advise complaining customers that their carrier has been changed to AT&T when in fact that order was submitted on behalf of a switchless reseller.

imposing a disproportionate burden on a particular group or carrier, in contrast to the three options proposed in the *FNPRM*." CompTel/ACTA Comments at 13. Qwest likewise observes that "the best way" to address the soft slamming issue is through "establish[ing] a neutral implementing agency," Qwest Comments at 10, and MCI WorldCom agrees that a neutral third party "is expected to provide a solution to the problem of locating the specific carrier that initiated an unauthorized conversion," MCI WorldCom Comments at 19. In light of these benefits in controlling soft slamming, and the other important advantages the NTP procedure clearly provides, the Commission should adopt that proposal in lieu of the three alternatives suggested in the *FNPRM*.

IV. THE COMMENTS CONFIRM THAT THE FNPRM'S PROPOSALS WOULD SUBVERT NEUTRAL THIRD PARTY VERIFICATION.

AT&T showed in its comments that the *FNPRM*'s proposal to permit or require entities that perform independent third party verification of carrier selections also to furnish "consumer information" about the carrier selection process would inevitably undermine the scrupulous neutrality of those verifiers, which the Commission has consistently sought to preserve. AT&T Comments at 41-43.[31] The large majority of commenters who address this issue likewise recognize that the verifier's involvement in such transactions should be strictly confined to confirming the identity of the customer and the customer's selection of a specific new preferred carrier, without any additional embellishment of the verifier's role.[32]

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[31] AT&T further showed that jeopardizing the independence of third party verifiers is all the more unnecessary because these entities have no demonstrated expertise about the carrier selection process as a whole, and such information is available to customers from a variety of government agencies and consumer groups. AT&T Comments at 42 & n.37.

[32] There is likewise substantial consensus among commenters that prohibiting a carrier from executing a "warm transfer" to the verifier via a three-way call, and instead requiring verification to be performed through an entirely separate telephone call, would serve no useful purpose and would unduly inconvenience customers. Bell Atlantic Comments at 3; Cable & Wireless Comments at 19; (continued...)

For example, Sprint correctly observes that the expanded role for third party verifiers described in the *FNPRM* "potentially puts the verifier in the position of serving as the carrier's agent, and compromises the verifier's independence." Sprint Comments at 9. MediaOne likewise states that allowing verifiers to dispense information "would create an incentive for verifiers to perform what amounts to a marketing service for the carriers who pay them." MediaOne Comments at 9. Other IXCs,[33] as well as many LECs,[34] raised similar objections to compromising the neutrality of third party verifiers. Finally, and significantly, not even VoiceLog or PriceInteractive, the sole third party verifiers to submit comments in this proceeding, expressed any support for expanding their role in the verification process in the manner suggested in the *FNPRM*. In the face of this overwhelming

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[32] (...continued)
CoreComm Comments at 5-6; Excel Comments at 6; GST Comments at 20; GTE Comments at 10; MediaOne Comments at 6-7; PriceInteractive Comments at 12; Qwest Comments at 12. Sales personnel who transfer such calls should then either drop off the call or, even if they are required to remain in the call path (to maintain the transmission between customer and verifier) should remain silent while the latter entity performs the verification process. *See, e.g.*,BellSouth Comments at 2; Excel Comments at 7; GTE Comments at 10-11; MCI Comments at 22; MoPSC Comments at 2; NASUCA Comments at 10; Qwest Comments at 12; SBC Comments at 11; Sprint Comments at 8, Teltrust Comments at 6.

[33] *See* MCI WorldCom Comments at 22-23 (noting that verification "has only one purpose – to confirm the fact of a desired sale" and that the verification process "has the greatest integrity and efficiency when it is limited to verifying information that the carrier has already obtained"); Cable & Wireless Comments at 20 (expanding scope of verifier activity "could affect the third party verifier's independence and objectivity"); Qwest Comments at 16 (to preserve its independence, a third party verifier should "not answer any questions or volunteer any information that could be construed as 'marketing' on behalf of a particular carrier's services").

[34] *See* GTE Comments at 11 (expanding the verifier's role "would compromise the independence of the third party verifier"); SBC Comments at 13 (allowing third party verifier to provide unrelated information "leaves the verification process open to the kind of pressure that could impact the independence of the verification process"); Bell Atlantic Comments at 4 (the Commission should "avoid the possibility that verification, itself, could be viewed as telemarketing on behalf of a carrier"); BellSouth Comments at 3 (allowing verifiers to provide additional information "would compromise to some degree the independence and objectivity of the verifier").

record, the Commission would not be justified in permitting or requiring any expanded role for third party verifiers in providing information to customers regarding the carrier selection process.[35]

V. THERE IS WIDE RECOGNITION AMONG THE COMMENTERS THAT MANDATORY CARRIER REPORTING OF SLAMMING COMPLAINTS SHOULD NOT BE REQUIRED.

With few exceptions, commenters on the *FNPRM*'s proposal (¶ 179) to require periodic reporting by carriers of the number of slamming claims lodged against them by end users share in AT&T's conclusion that such reporting would be burdensome for carriers and would provide no meaningful information for Commission oversight of slamming. AT&T Comments at 43-46. Significantly, this view of the utility of the proposed reporting obligation is shared by IXCs and LECs alike.

For example, Bell Atlantic acknowledges that, as AT&T has already pointed out, the raw number of slamming claims submitted to a carrier is not meaningful because "investigation may show that many of the reported carrier changes were, in fact, authorized." Bell Atlantic Comments at 7. Similarly, GTE notes that, while it receives claims from customers that they have been slammed by a given IXC, GTE "does not track whether these disputes are actual slams" and therefore "believes reporting PIC dispute information would be misleading." GTE Comments at 14. And, in like manner, SBC candidly admits that, when faced with a slamming claim as an executing carrier, it "does

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[35] There is likewise broad agreement among commenters that, as AT&T demonstrated, prescription of a definition of the term "subscriber" is both unnecessary and would inappropriately interfere with authorized carrier selections by related parties, such as spouses. *See* Bell Atlantic Comments at 7; Cable & Wireless Comments at 20-21; CompTel/ACTA Comments at 17; GST Comments at 21-23; GTE Comments at 12-13; MCI WorldCom Comments at 24; MoPSC Comments at 3; SBC Comments at 14-15; Sprint Comments at 10-11; *see also* AT&T Comments at 43 n.39.

not investigate to determine whether the slam has really occurred," and that reporting based on such unverified claims "seems impractical." SBC Comments at 15-16.[36]

These same serious concerns over the accuracy of both customer- and LEC-reported slamming claims are also mirrored in the comments of other IXCs. Thus, Sprint points out that PIC disputes reported by LECs "will inflate the number of slams attributed to other carriers because what is reported is the number of slamming complaints, without reference to whether a slam actually occurred or to the cause of the alleged slam." Sprint Comments at 11 (footnotes omitted). Qwest notes that "the mere reporting of slamming complaints, without information concerning the[ir] accuracy . . . would be both misleading and unduly burdensome to carriers and should not be required." Qwest Comments at 23.[37]

In sum, there is substantial concurrence among interested parties that mandatory reporting of alleged slamming incidents (whether or not validated by carrier investigation) would not provide the Commission with sufficient useful information to outweigh the substantial compliance burdens

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[36] Those LECs that support the reporting requirement fail to address this fundamental deficiency in the reliability of PIC dispute reports. For example, Ameritech asserts that reporting "could be extremely useful" and cites its own PIC dispute data as proof that informal slamming complaints to the Commission "do[] not reveal the scope of the problem." Ameritech Comments at 18. Ameritech fails to acknowledge, however, that AT&T has shown that the PIC disputes Ameritech has reported to AT&T are seriously overstated due to Ameritech's inclusion of PIC changes that were never submitted by AT&T to the LEC and other erroneous data. *See, e.g.*, AT&T's Initial Brief at 8-9., *Illinois Bell Tel. Co.* v. *AT&T Corp.*, No. E-97-41 (filed Aug. 14,1998).

[37] *See also* Bell Atlantic Comments at 7; Cable & Wireless Comments at 22; CoreComm Comments at 6; Excel Comments at 8; GST Comments at 25; GTE Comments at 14; SBC Comments at 16; U S WEST Comments at 28-29. Moreover, as AT&T's comments showed, and as other commenters confirm, even if law-abiding carriers exert their best efforts to comply in good faith with an obligation to file periodic slamming reports, there is no reason to believe that unscrupulous carriers would file accurate information implicating them in widespread slamming (or, for that matter, file any reports at all). AT&T Comments at 44; *see also, e.g.*, GST Comments at 25; MediaOne Comments at 16; RCN Comments at 6. Such skewed reporting would thus be more likely to misinform the Commission and potentially misdirect its efforts to enforce its regulations against entities that engage in flagrant slamming.

such a requirement would place on carriers. Accordingly, the Commission should reject this proposal in the *FNPRM*.

VI. THE COMMENTS REFLECT BROAD CONSENSUS THAT THE PROPOSED REGISTRATION REQUIREMENT FOR CARRIERS IS UNNECESSARY AND UNDULY BURDENSOME.

Finally, AT&T showed in its comments (pp. 46-49) that effective deterrence of unlawful slamming would not be advanced by the *FNPRM*'s proposal (¶¶ 180-182) to require all providers of interstate telecommunications services to register with the Commission and to require other providers, prior to agreeing to resell service, to verify the carrier's registration status. AT&T noted that, even in the absence of such a registration requirement, the Commission has already exercised its power under Section 214 to revoke the operating authority of entities that engage in flagrant slamming.[38] AT&T also showed that the registration requirement would needlessly duplicate other Commission registration requirements already in pace, and would create serious compliance burdens for law-abiding carriers.

AT&T's observations are widely supported by other commenters across a broad spectrum of interests. For example, many parties point out that telecommunications carriers are already required to register annually in connection with the Commission's administration of Telecommunications Relay Service ("TRS"). Like AT&T, these parties recognize that the TRS reports can adequately serve the interests addressed in the *FNPRM*'s proposal.[39] Similarly, many

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[38] *See* AT&T Comments at 46-47 (citing Order to Show Cause and Notice of Opportunity for Hearing, *In re CCN, Inc., Church Discount Group, Inc., Discount Calling Card, Inc., Donation Long Distance, Inc., Long Distance Services, Inc., Monthly Discounts, Inc. and Phone Calls, Inc.*, 13 FCC Rcd 13599 (1998) ("*Fletcher Companies*"). Significantly, no commenter disputes the Commission's legal authority to impose such sanctions for repeated intentional slamming, even in the absence of a formal registration requirement.

[39] *See, e.g.*, Bell Atlantic at 8; U S WEST at 30. Moreover, no commenter refutes AT&T showing (continued...)

commenters echo AT&T's observation that carriers' obligation under statute and the Commission's implementing regulations to designate an agent for service of process already fulfills the registration objective of the *FNPRM*.[40] Moreover, as U S WEST correctly points out, the Commission is currently engaged in a rulemaking to consolidate numerous currently-required carrier reports; mandating an additional report for the limited purpose proposed in the *FNPRM* is thus at odds with that initiative. U S West Comments at 30.[41]

Commenters also recognize that requiring carriers to confirm the registration status of their reseller customers is inappropriate, both because it shifts the Commission's enforcement responsibilities to carriers and because it subjects those entities to serious potential liability even for inadvertent errors in denying service.[42] Thus, like AT&T, these parties recognize that even if the Commission were to adopt this ill-advised registration proposal (and the record shows it should not), the Commission would be required to prescribe safeguards for innocent carriers that attempt in good

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[39] (...continued)
that the Commission's proposal imposes unwarranted compliance burdens because the information it requires (such as identification of "all officers and principals" of a carrier) is overbroad and difficult to interpret consistently. AT&T Comments at 48 n.46; *see also* CompTel/ACTA Comments at 16 (noting that requirement carrier show financial viability "is overly vague and undefined"); Cable & Wireless Comments (requirement "would force the Commission to set a level of acceptable financial surety").

[40] *See, e.g.*, CompTel/ACTA Comments at 15; U S WEST Comments at 30 n.62.

[41] *See* Notice of Proposed Rulemaking and Notice of Inquiry, *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, 13 FCC Rcd 19295 (1998).

[42] *See, e.g.*, Qwest Comments at 25 (the proposal "would unfairly impose upon the facilities-based carrier the duty to enforce a Commission regulation").

faith to comply with the requirement that they deny service to entities that do not appear to be validly registered.[43]

For all the reasons cited by these commenters and AT&T, the Commission should decline to adopt the proposed registration requirement.

[43] *See, e.g.*, Sprint Comments at 12 (Commission must provide assurance that "facilities-based carrier is not held responsible for the accuracy of the registration information provided by a reseller").

CONCLUSION

For the reasons stated above, the Commission should modify its proposals in the *FNPRM* in accordance with AT&T's comments and reply comments.

Respectfully submitted,

AT&T Corp.

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May 3, 1999

APPENDIX A

Commenters in CC Docket No. 94-129, filed March 18, 1999

1. Ameritech
2. Bell Atlantic
3. BellSouth Telecommunications, Inc.
4. Cable and Wireless USA, Inc.
5. Cincinnati Bell Telephone Company
6. Competitive Telecommunications Association/America's Carriers Telecommunication Association
7. CoreComm Ltd.
8. Excel Telecommunications, Inc.
9. GVNW Consulting, Inc.
10. GST Telecom Inc.
11. GTE Service Corporation
12. IXC Long Distance, Inc.
13. MCI WorldCom, Inc.
14. MediaOne Group, Inc.
15. Missouri Public Service Commission
16. Montana Public Service Commission
17. National Association of State Utility Consumer Advocates (NASUCA)
18. New York State Department of Public Service
19. PriceInteractive, Inc.
20. Qwest Communications Corporation
21. RCN Telecom Services, Inc.
22. SBC Communications, Inc.
23. Sprint Corporation
24. Tel-Save.com, Inc.
25. Teltrust, Inc.
26. U S West Communications, Inc.
27. VoiceLog LLC

CERTIFICATE OF SERVICE

I, Rudolph M. Kammerer, do hereby certify that on this 3rd day of May, 1999, I caused a copy of the foregoing AT&T's Reply Comments On The December 23, 1998 Further Notice Of Proposed Rulemaking to be served upon each of the parties listed on the attached Service List in the manner indicated.

/s/ Rudolph M. Kammerer

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